

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555 (JMP)

4 - - - - - x

5 In the Matter of:

6

7 LEHMAN BROTHERS HOLDINGS, INC., et al.

8

9 Debtors.

10 - - - - - x

11

12 U.S. Bankruptcy Court

13 One Bowling Green

14 New York, New York

15

16 July 19, 2012

17 10:09 AM

18

19

20

21 B E F O R E:

22 HON. JAMES M. PECK

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: Karen

1 HEARING re Debtors' One Hundred Fifty-Sixth Omnibus
2 Objection to Claims (No liability Derivatives Claim) [ECF
3 No. 17469]
4

5 HEARING re Debtors' Two Hundred Thirteenth Omnibus Objection
6 to Disallow and Expunge Certain Filed Proofs of Claim [ECF
7 No. 20102]
8

9 HEARING re Debtors' Two Hundred Fourteenth Omnibus Objection
10 to Disallow And Expunge Certain Filed Proofs of Claim [ECF
11 No. 20103]
12

13 HEARING re Debtors' Two Hundred Fifteen Omnibus Objection to
14 Disallow and Expunge Certain Filed Proofs of Claim [ECF No.
15 20104]
16

17 HEARING re Debtors' Two Hundred Sixteenth Omnibus Objection
18 to Disallow and Expunge Certain Filed Proofs of Claim [ECF
19 No. 20105]
20

21 HEARING re Debtors' Three Hundred Sixteenth Omnibus
22 Objection to Claims (Reduce and Allow Claims) [ECF No.
23 28429]
24
25

1 HEARING re Debtors' Forty-Second Omnibus Objection to Claims
2 (Late-Filed Lehman Programs Securities Claims) [ECF No.
3 11307]

4
5 HEARING re Debtors' Forty-Third Omnibus Objection to Claims
6 (Late-Filed Lehman Programs Securities Claims) [ECF No.
7 11308]

8
9 HEARING re Debtors' One Hundred Eighty-Ninth Omnibus
10 Objection to Claims (No liability Repo Claims) [ECF No.
11 19870]

12
13 HEARING re Debtors' Ninety-Seventh Omnibus Objection to
14 Claims (Insufficient Documentation) [ECF No. 14492]

15
16 HEARING re Debtors' One Hundred Twenty-Fifth Omnibus
17 Objection to Claims (Insufficient Documentation) [ECF No.
18 16079]

19
20 HEARING re Debtors' One Hundred Thirty-Eighth Omnibus
21 Objection to Claims (No Liability Derivatives Claims) [ECF
22 No. 16865]

23
24
25

1 HEARING re Debtors' Two Hundred Ninety-Seventh Omnibus
2 Objection to Claims (Invalid or No Blocking Number LPS
3 Claims) [ECF No. 27868]
4

5 HEARING re Debtors' Three Hundred Thirteenth Omnibus
6 Objection to Claims (To Reclassify Proofs of Claim as Equity
7 Interests0 [ECF Nos. 28433, 29279]
8

9 HEARING re Debtors' Three Hundred Fourteenth Omnibus
10 Objection to Claims (Late-Filed Claims) [ECF No. 28435]
11

12 HEARING re Debtors' Objection to Proof of Claim No. 66099
13 Filed by Syncora Guarantee, Inc. [ECF No. 20087]
14

15 HEARING re Debtors' Objection to Proof of Claim No. 58912
16 Filed by Citibank, N.A., London Branch [ECF No. 27862]
17

18 HEARING re Debtors' Objection to Proof of Claim No. 67735
19 Filed by Citigroup Global Markets, Inc. [ECF No. 27863]
20
21
22
23
24

25 Transcribed by: Sheila Orms

1 A P P E A R A N C E S :

2

3 WEIL, GOTSHAL & MANGES LLP

4 Attorneys for Debtors

5 767 Fifth Avenue

6 New York, NY 10153

7

8 BY: MAURICE HORWITZ, ESQ.

9 MARK I. BERNSTEIN, ESQ.

10 GARRETT A. FAIL, ESQ.

11

12 CHAPMAN & CUTLER LLP

13 Attorneys for US Bank, N.A.

14 330 Madison Avenue

15 34th Floor

16 New York, NY 10017

17

18 BY: CRAIG M. PRICE, ESQ.

19

20 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

21 1633 Broadway

22 New York, NY 10019

23

24 BY: ROSS G. SHANK, ESQ.

25

1 COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.

2 Attorneys for Highland Credit Strategies Master

3 Fund LP

4 900 Third Avenue

5 16th Floor

6 New York, NY 10022

7
8 BY: KENNETH L. BAUM, ESQ.

9
10
11 ALSO APPEARING TELEPHONICALLY:

12
13 ALBERTO BENSION, PRO SE

14 ANATOLY BUSHLER, FARALLON CAPITAL MANAGEMENT

15 BARRY P. GRUHER, GENOVESE JOBLOVE & BATTISTA, P.C.

16 THOMAS NG, ABN AMRO BANK N.V.

17 MATTHEW RIFINO, MCCARTER & ENGLISH

18 SASKIA VAN ROOY, PRO SE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: Be seated, please. Good morning.

Two days in a row, Mr. Fail.

MR. FAIL: I know. It's like the old days, Your Honor.

THE COURT: It is.

MR. FAIL: Good morning, Your Honor. For the record, Garrett Fail, Weil Gotshal and Manges for Lehman Brothers Holdings, Inc.

There are a number of items on the agenda this morning, take them in the order that they appear, the first six are uncontested matters.

The first matter that I'll present is the debtor's 156th omnibus objection. We're going forward today with respect to 11 claims of U.S. Bank. The debtors had objected to disallow these claims in their entirety, their derivative related claims. U.S. Bank had filed an objection after discussions and negotiations with U.S. Bank. Lehman Brothers Holdings, Inc. has agreed to allow the claims in a reduced amount, or in the amount of approximately \$177,000 for 11 claims, that's the aggregate.

U.S. Bank is here today and I understand that they consent to this, the relief being requested.

THE COURT: For record purposes, I should hear that consent.

1 MR. FAIL: Thank you, Your Honor.

2 THE COURT: Two days in a row for you, too.

3 MR. PRICE: That's right. Good morning, Your
4 Honor, Craig Price from U.S. Bank, National Association as
5 Trustee and we agree to the order.

6 THE COURT: Okay. Thank you. It's approved on
7 consent.

8 MR. FAIL: Thank you, Your Honor. Items 2 through
9 5 on the agenda relate to the debtor's 213th, 214th, 215th,
10 and 216th omnibus objections to claims.

11 Your Honor may recall at prior hearings, Your Honor
12 granted these objections that were uncontested on an
13 uncontested basis for approximately 1,587 claims. There
14 were approximately 145, 146 responses that were filed by
15 certain claimants. A second hearing was held. Subsequent
16 to that hearing, in accordance with Your Honor's direction
17 and suggestions, LBHI provided documentation to creditors
18 that we were able to contact by e-mail.

19 As a result of those conversations and providing
20 the documents, we are proceeding this morning with respect
21 to 25 claims on an uncontested basis. LBHI would like to
22 submit orders, eight claims on the 213th omnibus objection;
23 seven on the 214th; eight on the 215th; and two on the
24 216th, on an uncontested basis.

25 The order would clarify that the claims are not in

1 LBHI classes 1 through 10(c) in the plan. It says that they
2 are either in LBHI Class 11 or LBHI Class 12. That would be
3 the 510(b) class, Your Honor, or the equity class. And the
4 rights of the claimants, and the rights of LBHI to argue
5 that the claims fall within one or the other, and the
6 relative priority within those classes are reserved to
7 either be agreed upon between the parties or decided by the
8 Court.

9 In the event that there is a distribution to either
10 of those classes, the debtors project based on the
11 disclosure statement that there will not be distributions to
12 either of those classes. And therefore, rather than argue
13 today and expend additional resources, the parties have
14 agreed to resolve this consensually.

15 So we would request that Your Honor grant the
16 relief requested on a consensual basis.

17 THE COURT: The relief is granted on an uncontested
18 basis.

19 MR. FAIL: Thank you, Your Honor. The last item,
20 No. 6 on the agenda is the debtor's 316th omnibus objection
21 to claims. The debtors objected to 17 claims asserting
22 approximately \$234 million. The debtors sought to reduce
23 those claims down to \$128 million. The debtors filed one
24 amendment prior to the hearing to increase the amount of one
25 claim by approximately \$747,000. Subsequent to that, an

1 objection was filed to the motion on a separate claim. The
2 debtors have reached a resolution with that claimant, and
3 have increased ten claims as a result, by an aggregate of
4 approximately \$3 million.

5 The debtors are treating similarly situated
6 creditors similarly. So we are proceeding today on an
7 uncontested basis, and reducing claims from \$234 million to
8 \$132 million, a \$102 million reduction in claims.

9 THE COURT: It's approved on an uncontested basis.

10 MR. FAIL: Thank you, Your Honor. I'll turn the
11 podium over to Mr. Horwitz for the next item on the agenda.

12 MR. HORWITZ: Good morning, Your Honor, Maurice
13 Horwitz, Weil Gotshal & Manges, on behalf of Lehman Brothers
14 Holdings, Inc.

15 The first two contested items on today's agenda,
16 Item 7 and 8, are carryovers from the 42nd and 43rd omnibus
17 objections to claims. These objections sought to disallow
18 claims based on Lehman program securities because they were
19 filed after the bar date, applicable to such claims. That
20 date was November 2nd, 2009.

21 Your Honor, because these claims are very similar,
22 the responses are almost identical, I would propose to
23 address them together, at least in my remarks right now,
24 unless the Court has any objection to that.

25 THE COURT: No, that's fine. You can address them

1 at the same time.

2 MR. HORWITZ: Today LBHI as the plan administrator
3 proceeds as to eight claims, six that were included on the
4 42nd omnibus objection to claims, two that were on the 43rd
5 omnibus objection. These objections were filed concurrently
6 on September 13th, 2010 under ECF Nos. 11,307 and 11,308,
7 respectively.

8 The claims that we're proceeding on today are
9 listed on Exhibit A of LBHI's reply brief, which was filed
10 on July 17th, 2012, and is ECF No. 29443.

11 Each of these proofs of claim is based on Lehman
12 program securities. The claims were received by Epiq on
13 November 6th, 2009, which is four days after the applicable
14 bar date.

15 In their responses, the claimants argue that they
16 mailed their proofs of claim on October 21st, 2009. Prior
17 to the bar date. However, as LBHI states in its reply, to
18 satisfy the requirements of the bar date, or the bar date
19 order in these cases, claims had to be not just postmarked,
20 but actually received on the applicable bar date.

21 These claims were received after the bar date, and
22 therefore, cannot be deemed timely filed under the terms of
23 the bar date order.

24 None of the claimants has moved pursuant to
25 Bankruptcy Rule 9006(b)(1) for permission to file their

1 claims after the bar date, or to deem their claims timely
2 filed, but they have, in their responses, made two
3 assertions that would be relevant to a consideration of
4 whether or not their claims would satisfy the rigorous
5 standard for excusable neglect in the 2nd Circuit.

6 In Pioneer, the U.S. Supreme Court held that the
7 determination of whether neglect is excusable is an
8 equitable one, and the Court should consider four factors in
9 making this determination. One is the prejudice to the
10 debtors, the second the length of the delay and its
11 potential impact on judicial proceedings. The third, the
12 reason for the delay, including whether that reason was
13 within the reasonable control of the moving party, and for
14 whether the movant acted in good faith.

15 The 2nd Circuit does not give equal weight to these
16 four factors. The third factor, the reason for the delay,
17 and whether that delay was within the reasonable control of
18 the claimant is the most critical factor. And that's
19 because the three other factors will typically weigh in
20 favor of the moving party.

21 In their responses, the claimants state that the
22 delay is not attributable to their mistake or conduct in any
23 way, and is beyond their control. But the claimants, and
24 only the claimants had control over when they mailed their
25 claims, and what delivery service they used.

1 The Court has asked us in the past, and we have
2 asked ourselves when evaluating late claims, what is
3 reasonable conduct on the part of a claimant in order to
4 comply with the bar date and the bar date order. And we
5 have said that at a minimum, if a claimant chooses a
6 delivery system that publishes certain guidelines for how
7 long it will take for mail to arrive from point A to point
8 B, then the claimant should at least be held responsible for
9 abiding by those guidelines.

10 Here, the Hong Kong Post Office, in its published
11 guidelines expects, but does not guarantee that mail will be
12 delivered from Hong Kong to the United States anywhere
13 between 5 and 16 working days after mailing.

14 So any claimant endeavoring to meet the November
15 2nd deadline for LPS claims, would've needed to mail those
16 claims no later than October 9th or 12th, at the latest, to
17 be able to reasonably rely on the Hong Kong postal system to
18 deliver their claims on time.

19 Other forms of delivery were also available to the
20 claimants. They could've chosen an overnight delivery
21 service. Indeed many claimants did elect an overnight
22 delivery service to ensure that their claims were timely
23 filed. These were choses, they were within the claimant's
24 control, and only the claimant's control. And the claims
25 were late because the claimants did not elect either to mail

1 their claims earlier, or to use a faster delivery service.

2 The claimants have not demonstrated any other reason
3 for delay that was out of their control, and for this
4 reason, the claims should be expunged.

5 The claimants also assert that admitting their claims
6 would not cause any prejudice to the Chapter 11 estates. We
7 disagree. As we've said before, in relation to -- with
8 respect to other claims, and as this Court has noted,
9 prejudice can't be traced to just one claim. These -- this
10 is the proverbial floodgates argument, the floodgates would
11 open up, if one claim is permitted to slip through, and
12 indeed, there are still many late claims that the debtors or
13 the plan administrator have previously objected to.

14 Together with the eight claims before the Court
15 today, the plan administrator is working through the
16 responses, to pending objections with respect to
17 approximately 130 late claims. The aggregate asserted
18 amount of those claims is approximately \$223 million. That
19 is still a significant number, even in these cases, both of
20 claims, and a significant dollar amount.

21 There are also late claims that the plan
22 administrator hasn't yet identified to which the plan
23 administrator might still file objections. And we haven't
24 quantified how many of those are yet, in these days, it's
25 difficult to just search by filing date, because we have

1 rejection damaged claims and amended claims.

2 But allowing one late claim, Your Honor, even if
3 that claim is just a \$100,000 claim, could still set a
4 precedent for the remaining claims. More generally, when
5 considering prejudice, each late claim can't be considered
6 an isolation. The debtors, and now the plan administrator
7 have objected to more than 1,740 claims on the grounds that
8 those claims were untimely filed.

9 More than 1,350 of those claims have been expunged
10 because of this Court's strict enforcement of the bar date
11 in these cases. It simply would not be fair to creditors
12 whose claims have already been expunged, to treat these
13 claims any differently than those 1,350 other claims, merely
14 because the hearing on these claims is taking place today,
15 as opposed to a year ago or two years ago.

16 As this Court has recognized, the strict
17 enforcement of the bar date in these cases is critical, it
18 was critical for the debtors in formulating their plan. It
19 has been also critical for the debtors in maintaining a fair
20 and efficient claims process. The claimants have not borne
21 their burden for establishing excusable neglect. Their
22 claims were late for reasons that were within their control
23 and should be expunged.

24 Accordingly, LBHI as the plan administrator,
25 respectfully requests that the 42nd and 43rd omnibus

1 objections to claims be granted with respect to the claims
2 listed on Exhibit A of LBHI's reply.

3 THE COURT: Thank you for that thoughtful and
4 thorough argument. I'm going to ask if there's anyone here
5 in court or on the telephone who wishes to speak in
6 opposition to this omnibus objection?

7 There's no response.

8 That makes it much easier for me to not only
9 compliment you on your argument, but to conclude that there
10 is no one currently prosecuting any opposition to the
11 debtor's position with respect to these late claims from
12 Hong Kong.

13 I will note that I have spent quite a lot of time
14 thinking about what the right answer should be to the
15 question of whether it is ever truly safe to send a proof of
16 claim in an international insolvency case such as this by
17 means of the ordinary First Class mail offered by the
18 foreign jurisdiction, where the claimant happens to reside.

19 In part because these claims fall within the
20 permitted zone for the foreseeable delivery of mail from
21 Hong Kong to the United States, the situation presented
22 today is somewhat more difficult than the situation
23 presented last June, June of 2011, where we dealt with, I
24 think it was five business days, as opposed to today's seven
25 business days.

1 But in effect, the operative date can't be the rang
2 established by the local postal service for foreseeable
3 delivery, but instead has to be reasonable behavior on the
4 part of the claimant himself, herself, or itself.

5 Presumably, when dealing with something as
6 significant as a claim based upon a Lehman program security,
7 a claimant would take reasonable steps to assure delivery
8 prior to applicable bar date. Those steps, I would agree,
9 include mailing sufficiently in advance of the bar date that
10 the delivery is effectively derisked. That would mean
11 sending the proof of claim not less than 16 working days
12 prior to the bar date. And even then, there is some element
13 of what I have previously called proof of claim roulette, as
14 whether the proof of claim effectively will be delivered by
15 the bar date.

16 In a case, if one were presented, where someone had
17 mailed from Hong Kong a proof of claim for the sake of
18 discussion, 17 working days prior to the bar date, and the
19 proof of claim were delivered subsequent to the November 2,
20 2009 bar date, that is probably a distinguishable fact
21 pattern. Because there, the claimant will have done
22 everything that a reasonable person could have done in
23 relying upon the mail service to deliver the proof of claim
24 in time. To rule otherwise, would require every claimant to
25 use an overnight delivery service. I don't think that

1 should be the applicable procedural rule that applies.

2 Under the circumstances, and consistent with prior
3 rulings of the Court, that have strictly enforced the bar
4 date in these cases, I grant the debtor's/plan
5 administrator's objection to these proofs of claim as late
6 filed.

7 MR. HORWITZ: Thank you, Your Honor. I'll turn the
8 podium over to my colleague, Mark Bernstein for the next
9 item.

10 MR. BERNSTEIN: Good morning, Your Honor, Mark
11 Bernstein from Weil on behalf of the debtors. That
12 concludes the agenda for now. The remaining item, I believe
13 we even informed, we'll go forward at noon today.

14 THE COURT: Right. I'm told that counsel in Item
15 No. 9 for Highland Credit Strategies Master Fund is delayed
16 on account of car trouble. I'm not sure what that car
17 trouble is, but we'll find out at noon. And we're adjourned
18 until then.

19 MR. BERNSTEIN: All right. Thank you.

20 THE COURT: Thank you.

21 (Recessed at 10:18 a.m.; reconvened at 12:04 p.m.)

22 THE COURT: Be seated, please.

23 MR. BAUM: Good afternoon, Your Honor.

24 THE COURT: The first thing I want to do is what
25 happened to the car.

1 MR. BAUM: Your Honor, as I was saying to Mr.
2 Bernstein, and we both, I think, will agree that we're
3 better lawyers than mechanics. You know, these days I guess
4 everything works off computers, and if something in the
5 computer snags, it causes -- in this case, it caused a
6 problem with the transmission, which then causes cylinders
7 to misfire, and the car it's an absolute mess. But I do
8 want to thank Your Honor and Mr. Bernstein as well for being
9 able to accommodate me at noon.

10 THE COURT: It's not a problem. Off the record,
11 we'll find out what kind of car this is.

12 MR. BAUM: Off the record, it's a company that's
13 been through this court.

14 THE COURT: Okay. Well, that -- that suggests it's
15 an American car. We won't identify it further.

16 MR. BERNSTEIN: We'll leave it at that.

17 Your Honor, so the last item on this morning's
18 agenda was the debtor's 189th omnibus objection to the claim
19 of Highland Credit Strategies Master Fund.

20 This matter was initially heard at the March 2012
21 claims hearing, at which time Your Honor and opposing
22 counsel requested further information and evidence regarding
23 this matter.

24 Just to give you a little background, this is based
25 on Claim 3136 filed by Highland in the amount of \$327,000

1 approximately. The claim is based on a master repurchase
2 agreement that Highland entered into with both Lehman
3 Brothers, Inc. and Lehman Commercial Paper, Inc.

4 The master purchase agreement provides that
5 specific transactions under the purchase agreement will be
6 documented on confirmations, and that only the party to --
7 the Lehman party identified in that specific confirmation
8 will be liable for that transaction. The -- as is set forth
9 in Annex 1, which states that with respect to individual
10 purchase transactions, this agreement shall only apply to
11 the Lehman Brothers entity, i.e., Lehman Brothers, Inc.,
12 Lehman Brothers Commercial Paper, Inc. printed on the
13 confirmation, provided to the counterparty of the Lehman
14 Brothers entity.

15 As a result of this provision, to the extent LBI is
16 party to a confirmation, Lehman Commercial Paper, Inc. is
17 not responsible or obligated at all under that specific
18 transaction. Highland does not dispute that these are the
19 terms of the repurchase agreement.

20 The issue here arises based on the fact that the
21 confirmation at issue states at the top the words "infinity
22 *** Lehman Brothers Global Trading and Finance ***" and then
23 "infinity" again.

24 At the last hearing, Highland argued that the trade
25 confirmation identified Lehman Brothers Global Trading and

1 Finance as the Lehman party to the transaction, which they
2 argue without a scintilla of evidence was a trade name for
3 LCPI.

4 Lehman argued at the last hearing that its books
5 and records indicated that this trade was included on the
6 books and records of Lehman Brothers, Inc., not Lehman
7 Commercial Paper, Inc., and there was no indication at all
8 in Lehman's records that Lehman Brothers Global Trading and
9 Finance was a business name for LCPI.

10 At the time, Highland and Your Honor requested some
11 further information from Lehman as to what this entity
12 really was, whether it was even an entity. And a sworn
13 statement from Lehman indicating what their investigation
14 had found.

15 Lehman conducted some diligence on this issue and
16 filed the declaration of Thomas Rogers, an employee -- a
17 former employee of LBI prior to bankruptcy cases, and a
18 current Lamco employee.

19 Your Honor also inquired whether Highland had also
20 filed the claim against Lehman Brothers, Inc. and was
21 seeking to collect in that proceeding as well, and Highland
22 has informed the debtors that they have, in fact, filed a
23 claim against LBI and are still pursuing that claim.

24 At the last hearing, there were two creditors
25 taking the same position, Highland was one of them, and

1 Marquette Financial Companies was also making the same
2 arguments as Highland. Based on the -- Mr. Rogers'
3 declaration, Marquette agreed that there was sufficient
4 evidence that the trade was with LBI, had agreed to not
5 prosecute their response, and allowed their claim against
6 LCPI to be expunged.

7 Mr. Rogers' declaration explains that the
8 confirmations indicate that the trades were actually with
9 LBI. He describes that the confirmation identifies the
10 parties to the transaction as Highland on one hand, and with
11 respect to Lehman, it says company ledger, and then
12 identifies G4SK. I'm sorry, that's -- I apologize, that is
13 the Marquette confirmation. It identifies G422.

14 Mr. Rogers' declaration attaches Lehman's list of
15 company identifiers, which clearly show that G applies to
16 LBI, and the 422, Mr. Rogers describes, relates to a
17 specific trader or trading book at Lehman, which allowed
18 them to track the trades and determine how certain books
19 were performing. And Mr. Rogers' declaration attaches
20 certain screenshots which identify the specific traders and
21 trading book to which the numbers 422 relate.

22 Those screenshots also indicate that this trading
23 book rolls into LBI, and as a result, this trade -- the
24 confirmation, the G422 on the confirmation identifies that
25 this trade is with LBI.

1 Mr. Rogers also indicated that he's not aware,
2 after a search, of any entity named Lehman Brothers Global
3 Trading and Finance, and certainly does not believe it is a
4 trade name for Lehman Commercial Paper, Inc. And that the
5 words at the top of the confirmation, the infinity and
6 asterisks identify the Lehman system of which this
7 confirmation was printed. Infinity is the name of a
8 computer system, and Global Trading and Finance just
9 indicates that this is part of Lehman's financing business.
10 Just really the area of Lehman, not necessarily any kind of
11 entity assertion in that name.

12 Mr. Rogers is here today in the courtroom and is
13 available to answer any questions that Your Honor may have
14 about his declaration or that opposing counsel may have.

15 At this point, the debtors have rebutted the key
16 assertions in Highland's claim, and as a result, as the law
17 in this jurisdiction dictates, that Highland has the burden
18 to establish its claim by a preponderance of the evidence.
19 Highland has not provided one scintilla of evidence that
20 this trade is with LCPI. Highland is also seeking to
21 collect from LBI. They simply cannot be allowed or be
22 authorized to collect from two debtors on one trade.
23 There's no basis for asserting that the parties are joined
24 several. The contracts make clear, that only one party is
25 responsible, and that's the party indicated on the

1 confirmation.

2 Based on these arguments, and the arguments in our
3 papers, it's Lehman's position that this claim should be
4 disallowed and expunged.

5 THE COURT: Okay. Thank you.

6 MR. BAUM: Your Honor, in looking at the Rogers'
7 declaration, we see that Exhibit A is a very lengthy list of
8 what appear to be numerous, perhaps hundreds of entities
9 within the entire Lehman umbrella, and it does list in there
10 G Lehman Brothers, Inc., and includes a copy of the
11 transaction confirmation we've been examining in this
12 matter.

13 THE COURT: Why isn't that the end of this issue
14 and why don't you just go LBI and leave it at that?

15 MR. BAUM: Your Honor, the problem is, the
16 transaction confirmation is not evidence of how the
17 transaction was actually booked within the Lehman entity's
18 internal records. There's no actual sales ledger here per
19 se. There's what purports to be a confirmation of a
20 transaction, but there's nothing to show whose books this
21 transaction was actually recorded on.

22 THE COURT: But it's the confirmation that
23 controls.

24 MR. BAUM: I'm sorry, Your Honor?

25 THE COURT: It is the confirmation that controls.

1 MR. BAUM: Right. And our position remains there's
2 a designation here of G422, which, you know, in terms of our
3 party, our side to the transaction, completely unknown to
4 us, it has this remaining archaic reference to Lehman
5 Brothers Global Trading & Finance, we still don't know who
6 that is.

7 What I can tell Your Honor is that in our proof of
8 claim, Exhibits B and C were a September 26th, 2008 default
9 notice that was addressed to both LBI and LCPI. There was
10 an October 2008 calculation statement of damages, again
11 addressed both to LBI and LCPI. Our client, to this day,
12 still doesn't know who the transaction was actually booked
13 and completed with.

14 Our position, Your Honor, is that this reference to
15 Lehman Brothers Global Trading & Finance, as well as any
16 evidence of how the transaction or where -- whose ledger it
17 was actually booked in, creates a conflict. And under the
18 master repo agreement, if there's a conflict between the
19 transaction confirmation, and the master repo agreement, the
20 master agreement prevails.

21 The master agreement clearly shows that on the one
22 hand Highland was a party to it, and on the other hand, LBI
23 and LCPI are parties to it. So in the absence of any
24 evidence that can really clear this up, and we believe the
25 burden is on Lehman, the debtors here to clarify that,

1 there's an irreconcilable conflict that under the master
2 repo agreement, would leave both debtors.

3 Now, we're not looking to get a double recovery, of
4 course, and we did file a what you call a back stop claim
5 against the LBI estate, these exact same amount, exact same
6 documents, it's identical. But in the absence of any
7 ability to reconcile that conflict, we believe the claim is
8 properly against both the LBI and the LCPI estate.

9 THE COURT: Tell me what you mean by an
10 irreconcilable conflict.

11 MR. BAUM: Once again, Your Honor --

12 THE COURT: We have a confirmation that is, on its
13 face, with neither LBI nor LCPI.

14 MR. BAUM: Correct.

15 THE COURT: It's with Lehman Brothers Global
16 Trading & Finance, an apparent descriptive term, rather than
17 an identification of an entity. And we have evidence
18 through the Rogers' declaration indicating that the entity
19 identifiers are all LBI, as opposed to LCPI, which would
20 suggest to an observer, who in this case, happens to be
21 wearing a robe, that there is no irreconcilable conflict,
22 but in fact, that one can read the documents to describe LBI
23 as the counterparty, even though the name LBI does not
24 appear at the top of the confirmation, simply because of the
25 reference to G422.

1 MR. BAUM: Yeah. I guess the concern, Your Honor,
2 continues to be the G422. And again, this is not the actual
3 ledger, this is the transaction confirmation. I mean, it
4 makes reference to some ledger being out there, but we don't
5 have the ledger in front of us.

6 THE COURT: Have you questioned during the interval
7 between the first listing of this matter and today's hearing
8 any ledger documents that might help scratch this itch?

9 MR. BAUM: We had not, Your Honor. I believe it
10 was Your Honor's desire that once the declaration was given,
11 that we not engage rather in any kind of formal or even
12 informal, but rather -- discovery, but rather see where we
13 are once a declaration had been --

14 THE COURT: Well, what I was hoping candidly, was
15 that parties acting reasonably would be able to draw
16 reasonable conclusions on their own and if this needed to be
17 litigated, we would, but that presumably the facts are what
18 they are. The interpretation of the facts may vary, but the
19 facts are hard to rebut.

20 MR. BAUM: Again, Your Honor, we really revert back
21 to the G422. To Highland, it really means nothing, it
22 could've been called the red, white, and blue, and while it
23 may have an internal reference to Lehman, to one of these
24 Lehman entities, it's never been referenced anywhere else.
25 It's not in the master repo agreement, and again, our client

1 -- as far as our client was concerned, they were dealing
2 with both entities here. Every default notice, every
3 calculation statement was addressed to both Lehman entities,
4 so.

5 THE COURT: Well, I understand that from Highland's
6 perspective taking the more is more approach, rather than
7 the less is more approach, you put both of the counterparty
8 names on the master agreement and all of your notices, but
9 that isn't determinative of anything other than well,
10 somebody's responsible, so we'll put both names out there.

11 Now, that you know that there is extrinsic evidence
12 that supports a conclusion that the trade was actually with
13 LBI, and you have a protective claim against LBI anyway,
14 what basis do you have other than the desire to be obstinate
15 to continue to pursue this at the LCPI level, when there's
16 no evidence to support LCPI is responsible for the trade,
17 since there's nothing to connect LCPI to the trade
18 confirmation?

19 MR. BAUM: Understood, Your Honor. Again -- and
20 you're right, we don't have affirmative evidence to show
21 that LCPI was the party here. Our position remained that we
22 don't believe we've been given evidence definitively of who
23 this was, who it was actually booked to, any kind of actual
24 sales or other similar ledger. So that in the absence of
25 any clear evidence on that point, in our minds, it creates a

1 conflict. And that under the -- I mean, clearly the master
2 repo agreement had to contemplate there might be a situation
3 and where there will be a conflict between a transaction
4 confirmation and the master agreement, because otherwise it
5 wouldn't have stated so I made that provision.

6 We believe this is a case that fits in there, and
7 in the event of the conflict, you revert to the terms of the
8 repo agreement.

9 THE COURT: Well, I think I'm having some trouble
10 concluding that there is, in fact, the conflict that you
11 have identified. Because while it's true that Lehman
12 Brothers Global Trading and Finance is the name that appears
13 on the trade confirmation, there is nothing to link that
14 name to LCPI. And since there's nothing to link it to LCPI,
15 the most rational conclusion to draw is that it is linked
16 instead to LBI, because of the identity coding that I've
17 referenced in looking at the Rogers' declaration, the same
18 information that you've looked at.

19 So that one can identify the fact that there is a
20 distracting different name on the trade confirmation, but
21 resolved that distraction and clarify it by simply referring
22 to the coding, which is supported by the declaration. When
23 one does that, there's no reconcilable conflict, and a
24 finder of fact can conclude, based upon the trade
25 confirmation, and not having to refer to books and records,

1 that the trade confirmation appropriately confirms a trade
2 with LBI. And that's what I so conclude now.

3 So your objection to the disallowance is overruled
4 and you have your rights against LBI.

5 Now, if there's nothing more, we're adjourned.

6 MR. BERNSTEIN: There's nothing more. Thank you,
7 Your Honor.

8 MR. BAUM: Thank you again for accommodating at
9 noon, Your Honor.

10 THE COURT: Good luck with your car.

11 MR. BAUM: Thank you very much.

12 (Whereupon, the proceedings concluded at 12:21 p.m.)
13
14
15
16
17
18
19
20
21
22
23
24
25

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' One Hundred Fifty-Sixth		
Omnibus Objection to Claims- approved	8	6
Debtors' Two Hundred Thirteenth		
Omnibus Objection to Disallow		
and Expunge Certain Filed		
Proofs of Claim - approved	9	17
Debtors' Two Hundred Fourteenth		
Omnibus Objection to Disallow		
And Expunge Certain Filed Proofs		
of Claim - approved	9	17
Debtors' Two Hundred Fifteen		
Omnibus Objection to Disallow		
and Expunge Certain Filed Proofs		
of Claim - approved	9	17

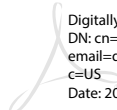
	DESCRIPTION	PAGE	LINE
1			
2	DEBTORS' TWO HUNDRED SIXTEENTH		
3			
4	OMNIBUS OBJECTION TO DISALLOW		
5	AND EXPUNGE CERTAIN FILED PROOFS		
6	OF CLAIM - APPROVED	9	17
7			
8			
9	DEBTORS' THREE HUNDRED SIXTEENTH		
10	OMNIBUS OBJECTION TO CLAIMS		
11	(REDUCE AND ALLOW CLAIMS)-APPROVED	10	9
12			
13	DEBTORS' FORTY-SECOND OMNIBUS		
14	OBJECTION TO CLAIMS (LATE-FILED		
15	LEHMAN PROGRAMS SECURITIES CLAIMS)		
16	- GRANTED	18	4
17			
18	DEBTORS' FORTY-THIRD OMNIBUS		
19	OBJECTION TO CLAIMS (LATE-FILED		
20	LEHMAN PROGRAMS SECURITIES CLAIMS)		
21	- GRANTED	18	4
22			
23	DEBTORS' ONE HUNDRED EIGHTY-NINTH		
24	OMNIBUS OBJECTION TO CLAIMS		
25	(NO LIABILITY REPO CLAIMS)-OVERRULED	30	3

C E R T I F I C A T I O N

I, Sheila G. Orms, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: July 20, 2012

Sheila
Orms

 Digitally signed by Sheila Orms
DN: cn=Sheila Orms, o, ou,
email=digital1@veritext.com,
c=US
Date: 2012.07.20 18:05:29 -04'00'

Signature of Approved Transcriber

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501